



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

April 2, 2004

MEMORANDUM

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FROM: Joseph F. Stoltz
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SUBJECT: Friends of Marilyn F. O'Grady (A03-04) – Referral Matter

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On March 22, 2004, the Commission approved the final audit report on Friends of Marilyn F. O'Grady (FMO).

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Tom Hintermister or Wanda Thomas at 694-1200.

Attachment:
Final Audit Report on Friends of Marilyn F. O'Grady

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Report of the Audit Division on Friends of Marilyn F. O'Grady

January 15, 2002 – December 31, 2002

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

Friends of Marilyn F. O'Grady (FMO) is the principal campaign committee for Marilyn F. O'Grady, Republican candidate for the U.S. House of Representatives from the state of New York, Fourth District. FMO maintains its headquarters in Garden City, New York. For more information, see the chart on the Campaign Organization, p.2.

Financial Activity (p. 2)

- **Receipts**
 - From Candidate Loans \$ 255,000
 - From Individuals 217,547
 - From Political Committees 12,160
 - Other Receipts 8,825
 - **Total Receipts** \$ 493,532
- **Disbursements**
 - **Total Disbursements** \$ 493,741

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of Prohibited Corporate Contributions (Finding 2)
- Receipt of Contributions that Exceed Limits (Finding 3)
- Disclosure of Loans (Finding 4)
- Failure to File 48 Hour Notices (Finding 5)
- Disclosure of Contributions (Finding 6)

¹ 2 U.S.C. §438(b).

Interim Report of the Audit Division on Friends of Marilyn F. O'Grady

January 15, 2002 – December 31, 2002



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Report of the Audit Division on Friends of Marilyn F. O'Grady

January 15, 2002 – December 31, 2002



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Part I

Background

Authority for Audit

This report is based on an audit of Friends of Marilyn F. O'Grady, undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and, as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 7, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect prior to November 7, 2002.

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Part II

Overview of Campaign

Campaign Organization

Important Dates	Friends of Marilyn F. O'Grady
• Date of Registration	March 21, 2002
• Audit Coverage	January 15, 2002 – December 31, 2002
Headquarters	Garden City, New York
Bank Information	
• Bank Depositories	1
• Bank Accounts	1 Checking Account
Treasurer	
• Treasurer When Audit Was Conducted	Thomas Keller
• Treasurer During Period Covered by Audit	Thomas Keller
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	FECFile
• Who Handled Accounting and Recordkeeping Tasks	Volunteer Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 15, 2002	\$ 0
Receipts	
○ From Candidate Loans	255,000
○ From Individuals	217,547
○ From Political Committees	12,160
○ Other Receipts	8,825
Total Receipts	\$ 493,532
Disbursements	
○ Operating Expenditures	493,741
Total Disbursements	\$ 493,741
Cash on hand @ December 31, 2002	\$ -209

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Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

FMO misstated receipts, disbursements, and cash balances during 2002. In response to the interim audit report, FMO amended its reports to correct the misstatements.

(For more detail, see p. 4)

Finding 2. Receipt of Prohibited Corporate Contributions

FMO received 37 prohibited contributions from 33 different corporate entities totaling \$9,195. Subsequently, FMO has refunded \$6,650 to 20 of these entities. Therefore, prohibited contributions from 13 entities totaling \$2,545 (\$9,195 - \$6,650) have not been refunded.

(For more detail, see p. 5)

Finding 3. Receipt of Contributions that Exceed Limits

FMO received what appears to be \$23,000 in excessive contributions from the Candidate's spouse. The Candidate maintains that the funds used to make the contributions were her personal funds. Nonetheless, in response to the interim audit report, FMO refunded \$23,000 to the Candidate's spouse.

(For more detail, see p. 7)

Finding 4. Disclosure of Loans

FMO received a total of \$55,000 in loans during the campaign that were not disclosed. In response to the interim audit report, FMO amended its reports to itemize each of these loans on Schedules A and C.

(For more detail, see p. 9)

Finding 5. Failure to File 48 Hour Notices

FMO failed to file 48 hour notices for 8 contributions totaling \$85,000. In response to the interim audit report, FMO stated that these notices were filed; however, they could not provide evidence of these filings.

(For more detail, see p. 10)

Finding 6. Disclosure of Contributions

FMO reported incorrect disclosure information for 42 contributions totaling \$24,750. In response to the interim audit report, FMO amended its reports to correct these contributions.

(For more detail, see p. 11)

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Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

FMO misstated receipts, disbursements, and cash balances during 2002. In response to the interim audit report, FMO amended its reports to correct the misstatements.

Legal Standard

A. Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle. 2 U.S.C. §434(b)(1), (2) and (4).

B. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 within in election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose of such operating expenditures. 11 CFR §104.3(b)(4)(i)(A).

Facts and Analysis

The Audit staff reconciled reported financial activity to bank records for 2002. The following chart outlines the discrepancies for receipts, disbursements, and the ending cash balance on December 31, 2002. Succeeding charts explain the reasons for the misstatements.

Comparison of Disclosure Reports and Bank Records

2002 Campaign Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @1/15/02	\$0	\$0	\$0
Receipts	\$431,158	\$493,532	\$62,374 Understated
Disbursements	\$404,316	\$493,741	\$89,425 Understated
Ending Cash Balance @12/31/2002	\$-11,770 ²	\$-209	\$11,561 Understated

² FMO's reported cash balance on 12/31/02 does not foot due to mathematical discrepancies.

The understatement of receipts was the net result of the following:

• Candidate Loan Not Reported (See Finding 4.)	+	\$ 55,000
• Contributions Reported Twice ³	—	17,580
• Contributions Reported with Wrong Amount	—	325
• Contributions Not Reported	+	17,430
• Unexplained Differences	+	7,849
• Net Understatement of 2002 Receipts		\$ 62,374

The understatement of disbursements was the net result of the following:

• Disbursements Not Reported		
a. Media Services	+	\$ 85,135
b. Campaign Materials	+	35,254
c. GOTV Telephone Calls	+	6,433
d. Miscellaneous Operating Expenses and Bank Charges	+	631
• Disbursements Reported Twice ³	—	37,888
• Unexplained Differences	—	140
• Net Understatement of 2002 Disbursements		\$ 89,425

Closing Cash on Hand:

FMO misstated the cash balance throughout the year 2002 because of the errors described above. In addition, the correct cash balance was not carried forward from the handwritten 12 Day Pre-Primary Report to the computer generated October Quarterly Report. On December 31, 2002, the cash balance was understated by \$11,561.

At the exit conference, the Audit staff explained the reasons for the misstatements and provided schedules of the reporting discrepancies. The Candidate expressed a willingness to make the necessary changes to correct the reported figures.

Interim Audit Report Recommendation and Committee Response

In response to the recommendation in the interim audit report, FMO filed amended reports to correct the misstatements.

Finding 2. Receipt of Prohibited Corporate Contributions

Summary

FMO received 37 prohibited contributions from 33 different corporate entities totaling \$9,195. Subsequently, FMO has refunded \$6,650 to 20 of these entities. Therefore,

³ FMO overlapped the coverage dates for the 12 Day Pre-Primary and October Quarterly Reports causing a duplication of financial activity between July 1, 2002 and August 22, 2003. A contribution of \$50 was also reported on the July Quarterly, 12 Day Pre-Primary, and October Quarterly Reports.

prohibited contributions from 13 entities totaling \$2,545 (\$9,195 - \$6,650) have not been refunded.

Legal Standard

A. Receipt of Prohibited Corporate Contributions. Political campaigns may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

B. Questionable Contributions. If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - Return the contribution to the contributor without depositing it; or
 - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
 - Confirm the legality of the contribution; or
 - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

A review of contributions received by FMO resulted in the identification of 37 contributions from 33 different corporate entities totaling \$9,195. Approximately 38% of the identified entities were professional corporations.

At the exit conference, FMO was provided a list of those contributions from corporations. The Candidate recognized many of the professional corporations on the list and explained that she was unaware that contributions from such entities were prohibited. The Candidate also stated that these individuals probably intended to contribute using their personal accounts but may have accidentally used their business checks. Nonetheless, the Candidate acknowledged that she would contact the individuals to offer refunds.

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Subsequent to the exit conference, FMO provided check copies to support refunds to 12 contributors totaling \$3,550.

FMO did not establish a separate account for questionable contributions and did not maintain a sufficient balance to refund impermissible contributions for a majority of the period after October 7, 2002.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FMO provide evidence that these contributions are not prohibited or refund the remaining \$5,645 in contributions identified as being prohibited. If funds were not available to make the necessary refund, then the Audit staff recommended the refund amount due be disclosed on Schedule D (Debts and Obligations) until funds become available to make the refunds.

In response to the recommendation in the interim audit report, FMO provided check copies to support additional refunds to 8 contributors totaling \$3,100. To date, FMO has provided documentation to support refunds to 20 entities totaling \$6,650. Therefore, prohibited contributions from 13 entities totaling \$2,545 (\$9,195 - \$6,650) have not been refunded.

Finding 3. Receipt of Contributions that Exceed Limits

Summary

FMO received what appears to be \$23,000 in excessive contributions from the Candidate's spouse. The Candidate maintains that the funds used to make the contributions were her personal funds. Nonetheless, in response to the interim audit report, FMO refunded \$23,000 to the Candidate's spouse.

Legal Standard

A. Authorized Committee Limits. An authorized committee may not receive more than \$1,000 per election from any one person. 2 U.S.C. §§441a(a)(1)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Contribution. The term contribution includes any loans (excluding a bank loan), a guarantee, endorsement, and any other form of security. A loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR §110 shall be unlawful whether or not it is repaid. 11 CFR §§100.7(a)(1)(i)(A)

C. Expenditures by Candidates. Candidates for Federal office may make unlimited expenditures from personal funds. 11 CFR §110.10(a)

D. Definition of Personal Funds. Personal funds of the candidate include the following:

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1. Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either.
 - a. Legal and rightful title, or
 - b. An equitable interest
2. Salary and other earned income from bona fide employment and dividends and proceeds from the sale of the candidate's stock or other investments. 11 CFR §110.10(b)(2).

Facts and Analysis

During October of 2002, FMO received a total of \$25,000 in loans from a business bank account in the name of the Candidate's spouse. These loans were made by two checks, one for \$15,000 and the other for \$10,000, that were imprinted only with the name and credentials of the Candidate's spouse as the account holder. According to the Candidate, this account is maintained for the dental practice operated by her spouse.

At the exit conference, the Audit staff requested further documentation from the Candidate to support that she had either legal and rightful title or an equitable interest in the account in her spouse's name. The Audit staff explained that without such documentation, the loans would be considered a contribution from her husband solely and result in a \$23,000 excessive contribution to FMO (\$25,000 less the \$2,000 combined limits for the primary and general elections). The Candidate indicated she would request the necessary documentation from the bank and stated her understanding that the account was a joint asset according to laws of the state of New York.

Subsequent to the exit conference, the Candidate stated that she had attempted to obtain account information from the bank but was told that retrieving the records would be time consuming because the account was established long ago and before the bank changed ownership. The Candidate provided a notarized letter from her spouse explaining that since the account represents income from his dental practice and is reportable as their combined income for federal taxes, it was their understanding that the funds were a joint asset and thereby permissible for use in the campaign.

With regards to her comments on joint assets under New York law, the Audit staff sought legal guidance from the Commission's Office of General Counsel (OGC). Based on a review of the available facts, OGC's provided a legal analysis of applicable New York marital property laws and determined these laws did not support the Candidate's contention that the funds in her spouse's account were joint assets. OGC's legal analysis stated, in part, that New York marital property laws provide that any property acquired by either spouse during the marriage is "marital property" regardless of how the property was acquired or titled. The law further provides that, upon dissolution of the marriage, marital property is equitably divided between the spouses pursuant to certain factors set forth in the statute. Nevertheless, several courts have concluded that a spouse has no vested rights in marital property titled in the name of the other spouse unless and until there has been an entry of judgment dissolving the marriage. Consequently, even if the

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funds used to make the loans constitute “marital property” under New York law, Ms. O’Grady does not have any vested right to such property, if it is titled in Mr. O’Grady’s name, until the marriage is legally dissolved.

The Audit staff’s information on this account was limited to copies of bank statements and a copy of one of the contribution checks. Without third party documentation to support the Candidate’s legal and rightful title or an equitable interest in this account, the Audit staff considers the funds loaned to FMO as solely from the Candidate’s spouse.

FMO did not establish a separate account for questionable contributions and did not maintain a sufficient balance to refund impermissible contributions for a majority of the period after October 7, 2002.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FMO provide evidence the contributions were made from the Candidate’s personal funds. Absent such evidence, it was recommended that FMO refund \$23,000 to the Candidate’s spouse. If funds were not available to make the necessary refund, then the Audit staff recommended the refund amount due be disclosed on Schedule D until funds become available to make the refunds.

In response to the recommendation in the interim audit report, the Candidate reiterated her argument that these funds were her personal assets since they were reportable as combined income for tax purposes. Nonetheless, FMO provided a copy of a \$23,000 check from a joint checking account of the Candidate and her spouse to FMO and a copy of a check in the same amount from FMO to the Candidate’s spouse for the refund of the excessive amount.

Finding 4. Disclosure of Loans

Summary

FMO received a total of \$55,000 in loans during the campaign that were not disclosed on Schedules A. In response to the interim audit report, FMO amended its reports to itemize each of these loans on Schedules A and C.

Legal Standard

A. Contents of Reports. Each report must disclose for the reporting period and for the election cycle, the total amount of loans made by or guaranteed by the candidate and the identification of each person who makes, endorses or guarantees a loan to the committee. 2 U.S.C. §§434(b)(2)(G) and (3)(E)

B. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

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C. Separate Schedules. A political committee must file separate schedules for debts and obligations owed by the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

D. Itemizing Loans. Each person who makes a loan to the political committee during the reporting period must be disclosed with the following information:

- Identification of any endorser or guarantor of the loan;
- The date the loan was made;
- The amount of the loan. 11 CFR §104.3(a)(4)(iv).

Facts and Analysis

During the period covered by the audit, FMO received a total of \$255,000 in loans from accounts of the Candidate or candidate's spouse. This amount was comprised of eight separate loans made to FMO at various times throughout the campaign. FMO must itemize the initial receipt of each loan on Schedules A (Itemized Receipts) for Line 13 (Loans) in addition to continuously reporting the principal amount owed by FMO for each loan on Schedules C (Loans). However, a review of FMO's reports indicated that the initial receipt of two loans, one for \$40,000 and the other for \$15,000, were not itemized on Schedules A or on the Detailed Summary page of the 12 Day Pre-General report (See misstatement of receipts in Finding 1)⁴. In addition, FMO did not continuously report the principal amount of each loan owed on Schedules C for all reporting periods.

At the exit conference, FMO was informed of the inaccuracies with the reporting of loans. The Candidate indicated that all necessary amendments would be filed to accurately disclose each of the loans made to FMO.

Interim Audit Report Recommendation and Committee Response

In response to the recommendation in the interim audit report, FMO amended reports to itemize each of these loans on Schedules A and Schedules C.

Finding 5. Failure to File 48 Hour Notices

Summary

FMO failed to file 48 hour notices for 8 contributions totaling \$85,000. In response to the interim audit report, FMO stated these notices were filed; however, they could not provide evidence of these filings.

⁴ Although FMO never reported \$55,000 in receipts on Line 13 of the Detailed Summary Page for the 12 Day Pre-General Report, FMO did subsequently disclose the \$40,000 loan from the candidate's personal funds on Schedule C of the 30 Day Post General Report

Legal Standard

Last-Minute Contributions (48 Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from banks. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed those contributions of \$1,000 or more that were received during the 48 hour notice filing period for the primary and general elections. FMO failed to file 48 hour notices for 8 contributions totaling \$85,000 as summarized below.

Contribution Type	Primary	General	Total
Loans from Candidate	\$50,000	\$20,000	\$70,000
Loans from Candidate's Spouse		\$10,000 ⁵	\$10,000
Contributions from Individuals & PAC's	\$1,000	\$4,000	\$5,000
48 Hour Notices Not Filed	\$51,000	\$34,000	\$85,000

At the exit conference, the Candidate was informed of the failure to file 48 hour notices. The Candidate stated that many of the other 48 hour notices were filed properly and the non filing of these notices was probably a reporting oversight.

Interim Audit Report Recommendation and Committee Response

In response to the recommendation in the interim audit report, FMO stated that it was their understanding that these notices were filed; however, they could not produce evidence of these filings.

Finding 6. Disclosure of Contributions

Summary

FMO reported incorrect disclosure information for 42 contributions totaling \$24,750. In response to the interim audit report, FMO amended its reports to correct these contributions.

⁵ This amount is included in the total of contributions from the Candidate's spouse discussed in Finding 3.

Legal Standard

A. When to Itemize. Authorized candidate committees must itemize any contribution from an individual if it exceeds \$200 per election cycle either by itself or when aggregated with other contributions from the same contributor; 2 U.S.C. §434(b)(3)(A).

B. Election Cycle. The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. 11 CFR §100.3(b).

C. Definition of Itemization. Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- The election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A)

Facts and Analysis

The Audit staff reviewed all contributions from individuals requiring itemization on Schedules A and identified 42 contributions totaling \$24,750 that FMO failed to properly disclose. The majority of these contributions were errors because FMO incorrectly aggregated contributions received from the same individuals. FMO's problem with aggregating contributions was due, in part, to those contributions reported on handwritten reports that were not aggregated with those contributions included on later computer generated reports.

At the exit conference, the Audit staff provided FMO schedules of those contributions noted above. The Candidate acknowledged that the reporting inaccuracies were the result of the filing problems encountered by the committee. She also stated her willingness to amend the reports to correct any inaccuracies.

Interim Audit Report Recommendation and Committee Response

In response to the recommendation in the interim audit report, FMO amended its reports to correct these contributions.

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